

January 24, 2002

The Honorable Larry D. Thompson
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Thompson:

As the Ranking Member of the House Judiciary Committee, I am writing to request that the U.S. Department of Justice appoint an outside special counsel to investigate Enron for potential violations of Federal criminal law pursuant to your special counsel regulations (28 C.F.R. part 600). The Enron case represents one of the largest corporate frauds in the nation's history, and the potential for conflicts of interest are so sweeping and widespread that it necessitates an outside counsel to ensure public confidence. In the post-Watergate era, it is unprecedented for an Administration to investigate one of its largest contributors and former employer of high-ranking officials, and I hope the Bush Administration does not become the first.

Under your own regulations, the Attorney General (or Acting Attorney General) is required to appoint a special counsel when (1) a "criminal investigation of a person or matter is warranted," (2) the investigation "would present a conflict of interest for the Department or other extraordinary circumstances," and (3) "it would be in the public interest to appoint an outside special counsel to assume responsibility for the matter."

In the present case, and as detailed below, it is already abundantly clear that a criminal investigation is warranted. It also seems clear, as further detailed below, that such an investigation presents an irreconcilable conflict of interest, given the massive campaign donations from the parties subject to the investigation and the Bush Administration and the overlap between individuals in Enron's direct or indirect employ and the Administration. To my knowledge, never in the nation's history have parties under criminal investigation given as much money on an ongoing basis as has been the case in the Enron matter. With each passing day, more information is uncovered about the numerous contacts between Enron and the Administration that demonstrates Enron's influence.

I also believe it is clear that it would be in the public's interest to appoint an outside

special counsel. Bringing an individual into the matter from outside the government, having no allegiance to the Bush Administration, and who has “a reputation for integrity and impartial decisionmaking, and with appropriate experience to ensure that the investigation will be conducted ably, expeditiously, and thoroughly” could only instill greater public confidence in your investigation. The fact that the Attorney General already has chosen to recuse himself due to the taint of Enron contributions he has received, that the entire Houston U.S. Attorneys Office has been forced to recuse itself, that you previously worked for a law firm that may well be implicated in the Enron case, and that the Administration faces litigation from the General Accounting Office regarding turning over energy policy records also involving Enron only further contribute to the need to bring an outside party in to supervise the criminal investigation.

For your benefit, the following is a more detailed statement of the alleged criminal wrongdoing and the potential conflicts of interest that exist in the Enron case:

Enron – Enron and its executives are alleged to have violated a wide variety of criminal statutes, including obstruction of justice relating to document shredding (15 U.S.C. § 1510); insider trading of securities based on material and nonpublic information (15 U.S.C. § 78dd); securities fraud (15 U.S.C. § 10(b)); mail and wire fraud (18 U.S.C. chapter 63); tax evasion (26 U.S.C. § 7201); perjury on tax documents (26 U.S.C. §§ 7206-07); and breach of fiduciary duties in connection with pension plans (29 U.S.C. § 1131).

At the same time, Enron and its employees have given more money to President Bush’s various campaigns than any other entity, approximately \$2 million, and were one of the largest contributors to his presidential campaign. In addition to contributions, the Administration has a number of other ties that create a conflict of interest: Vice President Dick Cheney met with Enron CEO Kenneth Lay six times last year as a part of the Administration’s energy task force (the full extent of collaboration between the Administration and Mr. Lay in this regard is unknown because the Vice President has refused to disclose records of this panel either to the GAO or to Congress); the Vice President lobbied the Government of India on behalf of Enron’s troubled \$2.9 billion power plant project in New Delhi; the President’s top economic advisor, Lawrence Lindsey, was paid \$50,000 as a consultant to Enron as recently as 2000 and he subsequently wrote a report to the President outlining a positive economic outlook for Enron shortly before it collapsed; the President’s top political advisor, Karl Rove, owned as much as \$250,000 in Enron stock; Trade Representative Robert Zoellick was previously employed by Enron; and Republican National Committee Chairman Marc Racicot was a lobbyist for Enron until January 10 of this year.

Arthur Andersen – Arthur Andersen, the accounting and consulting firm hired by Enron, also is alleged to have violated Federal criminal statutes, including obstruction of justice

relating to document shredding (18 U.S.C. § 1510); tax evasion (26 U.S.C. § 7201); and perjury on tax documents (26 U.S.C. §§ 7206-07).

Like Enron, Arthur Andersen has a number of ties to the Administration that create a conflict of interest: Andersen was the fifth largest contributor to the Bush-Cheney campaign and was a contractor hired by the Administration;¹ and SEC Chairman Harvey Pitt was an attorney with the law firm of Fried Frank Harris Shriver & Jacobson, where he worked on behalf of Arthur Andersen, and another attorney at the law firm, Jordan Mintz, has stated that Enron sought the firm's advice on its financial structure.

Vinson & Elkins – Vinson & Elkins, a law firm that helped Enron remove debt from its balance sheet and decide what information executives disclosed to the SEC, is also alleged to have violated Federal criminal laws, including securities fraud (18 U.S.C. § 10(b)).

More than perhaps any other law firm, Vinson & Elkins has its own connections to the Administration that weigh against DOJ completing the investigation internally: the firm was the second largest contributor to the Bush-Cheney campaign, giving over \$200,000, and White House Counsel Alberto Gonzales was a partner in the firm's corporate group.

As you may be aware, I approach this matter from the perspective of a legislator who has criticized specific independent counsels in the past. I believe Independent Counsel Kenneth Starr, who was not a full-time counsel, suffered from his own conflicts, improper leaking, and used inappropriate investigative techniques. However, I never lost faith in the underlying premise of the Independent Counsel law, and indeed have introduced legislation in a previous Congress that would have extended the law and cured many of the problems that came to light under Mr. Starr (H.R. 117, 105th Congress). Although the law was permitted to lapse by the Republican Congress, the regulations issued by the Department offer the public some semblance of independence which would in certain respects help the Department to mitigate the conflict of interest problems presented in the Enron case. Beyond that, should you choose to appoint a special counsel, I would urge you to offer the individual the greatest degree of independence possible so that the Enron matter may fairly and promptly be resolved.

I look forward to hearing whether you will appoint a special counsel, and, if not, the

¹ In June, 2001, the Attorney General directed you to initiate a comprehensive review of the Federal Bureau of Investigation and to submit your recommendations for any reform this month – to assist in this review, in July you commissioned a study, costing more than \$700,000, to be conducted by Arthur Andersen, to evaluate the mission, structure, information technology, internal problem-spotting mechanisms and crisis management systems within the FBI – under the terms of the service contract with the firm, Arthur Andersen personnel have access to confidential and sensitive FBI files and databases.

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reason for your decision. If you have any questions or concerns regarding this request, please feel free to contact me or my staff at (202) 225-6504.

Sincerely,

John Conyers, Jr.
Ranking Member

cc: The Honorable F. James Sensenbrenner, Jr.
Chairman
U.S. House Committee on the Judiciary

The Honorable Daniel J. Bryant
Assistant Attorney General
Office of Legislative Affairs